IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 634

MAE WHEELER, ET AL.

Appellants,

—v.—

JOHN MONTGOMERY, ET AL.

Appellees.

Appeal from the United States District Court
for the Northern District of California

JURISDICTIONAL STATEMENT FILED OCTOBER 11, 1968
PROBABLE JURISDICTION NOTED APRIL 21, 1969

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 48303

MAE WHEELER v. JOHN MONTGOMERY

DOCKET ENTRIES

DATE 1967		FILINGS—PROCEEDINGS
Nov.	30	1. Filed ord. permitting action to be filed in forma pauperis. Zirpoli
	30	2. Filed complaint. Issued summons.
Dec.	1	3. Filed motion by pltff. for temp. restrain. order, with supporting papers attached.
	1	4. Filed motion by pltff. for prelim. injunc., with supporting affidavits attached.
	1	5. Filed brief by pltff. supporting mos. for a temp. restrain. order and prelim. injunc.
	1	6. Filed appli. by pltff. for convening of 3 Judge Court.
	1	7. Filed memo by deft. Ronald H. Born opposing mo. for a temp. restrain. order and prelim. injunc.
	1	8. Filed declaration of Ronald H. Born on behalf of City and Co. of S.F. opposing mos.
	1	Ord., aft. hrg., Court granted in part the appli. for a temp. restrain. order and prelim. injunc. and restored pltff. to Welfare assistance aid effective Dec. 1, 1967, as will more fully appear in findings and order to be presented by counsel for pltff.; the Court deferred ruling for 30 days without prej. on pltff's. mo. for the convening of a 3 Judge Court. (Zirpoli)
	6	9. 12:34 P.M., Filed temporary restraining order. (Zirpoli)
	7	10. Filed proof of service of summons & complt. on deft. John Montgomery, etc., Nov. 30, 1967.

DATE 1967	FILINGS—PROCEEDINGS
11	11. Filed notice & Motion by Joseph Granatier and Albert Curry, to intervene as pltffs., Dec. 20, 1967, 9:45 A.M., with supporting papers attached.
13	12. Filed notice & Motion by Virginia Hill to intervene as party pltff., Dec. 20, 1967, 9:45 A.M., before Judge Zirpoli, with supporting papers attached.
15	13. Filed notice & Motion by pltff. for modification of temp. restrain. order, Dec. 15, 1967, 9:45 A.M. before Judge Zirpoli, with supporting papers attached.
15	Ord. pltff's. mos. to intervene, for a 3 judge court, for a class action & to modify restraining order taken under submission; motions noticed for hrg. on Dec. 20, & Jan. 2, 1968 ordered off calendar. (Zirpoli)
18	14. Filed motion by Lizzie Reeves for leave to intervene as a party pltff. and for a temp. restrain. order, with supporting affidavit & memo.
18	Lodged temp. restrain. order.
18	Lodged intervenor's complt. (See Sheet "B")
20	15. Filed suppl. affidavit of Lizzie Reeves supporting mo. for temp. restrain. order & mo. to intervene.
20	16. Filed affidavit of J. Gerald Mabey.
20	Ord., aft. hrg., Mo. of Lizzie Reeves to intervene as pltff. and for temp. restrain. order, denied without prej. (Zirpoli)
20	17. Filed Memorandum Opinion and order denying continuance; partially vacating prior order; permitting class action; denying motions to intervene; denying mo. to modify temp. restrain. order; notification & certification of necessity of 3 Judge Court. (Zirpoli) Copies mailed.
20	18. Filed notification and certificate to convene a 3 Judge Court. (Zirpoli) Copies mailed to counsel & Judge Chambers, CCA.
26	19. Filed summons, on return.

DATE 1967		FILINGS—PROCEEDINGS
	26	20. Filed answer of deft. Ronald Born, indiv. and as Genl. Mgr. of San Francisco City & Co. Dept. of Social Services.
	29	21. Filed order convening 3 Judge Court and designating Judges Oliver D. Hamlin, CJ; Albert C. Wollenberg and Alfonso J. Zirpoli, DJ's. (Chambers, CJ)
DATE 1968		
Jan.	4	3 Judge copies made & distributed.
	5	22. Filed notice by pltff. of taking deps. of Frank Vasquez, Norman Clayton, & Wilbur L. Parker.
	5	23. Filed notice by pltff. of taking dep. of Mary Jane Rand and issued subp.
	8	24. Filed dep. subp. d.t., exec. Jan. 8, 1968, as to Mary Jane Rand.
	15	25. Filed notice by pltff. of production of documents pursuant to subp., of a copy of the proposed decision in the Mae Wheeler Fair Hearing, etc. and issued subp.
	17	26. Mailed notice of pre-trial conf. on Feb. 7, 1967, 11:00 A.M. before Judge Zirpoli for sched. a time table for fur. pleadings, etc.; deft. John Montgomery is given to & incl. Jan. 22, 1968 to file his answer or other pleadings. (Zirpoli) Copies sent to Judge Hamlin & Judge Wollenberg.
	19	27. Filed answer of John Montgomery, indiv. & as Director of the Calif. State Dept. of Social Welfare, with exh. attached.
	25	28. Filed notice by pltff. of taking dep. of Dr. Scott Brier, Professor, School of Social Welfare, Berkeley, Calif. & iss. subp.
	29	29. Filed stip. & order cont. pre-trial conf. to Feb. 14, 1967, at 11:00 A.M. (Zirpoli)
	29	30. Filed dep. subp. d.t., exec. Jan. 29, 1968, as to Scott Brier.
Feb.	6	31. Filed deposition of Frank J. Vasquez.
	6	32. Filed deposition of Wilbur L. Parker.
	6	33. Filed deposition of Norman Clayton.

DATE 1968		FILINGS—PROCEEDINGS
	14	Ord., aft. pre-trial conf., a joint pre-trial order to be presented. (Zirpoli)
	14	34. Filed additional statistical material in regard to the deposition of Wilbur L. Parker. (In brown envelope)
	14	35. Filed deposition of Mary Jane Rand, with statistical material in brown envelope attached.
	23	36. Filed additional statistical material, as to the deposition of Frank J. Vasquez. (In brown envelope in file)
Mar.	14	37. Filed notice of trial before 3 Judge Court, Apr. 12, 1968, 10 A.M. in Courtroom No. 2; pltff's. brief to be filed by Mar. 15, 1968; resps' brief filed by Apr. 1, 1968 (Clerk)
	19	38. Filed brief in support of motion for preliminary injunction, etc.
	20	39. Filed pre-trial order case will probably be set during week of April 8, 1968. (Zirpoli)
Apr.	1	40. Filed defts' reply trial brief.
	9	41. Filed pltffs' reply brief.
	9	42. Filed pltffs' Exhibit Number 1.
	11	43. Filed list of documents described in pre-trial order, dated March 19, 1968, marked for identification and to be offered as pltffs' exhibits in evidence.
	11	44. Lodged order form. (Preliminary injunction)
	12	Trial before 3 Judge Court, ordered case submitted. (Hamlin, Wollenberg, Zirpoli)
	19	45. Filed memorandum opinion and order that this proceeding may, with propriety, now be dismissed. (Hamlin, CJ, Wollenberg, Zirpoli)
June	14	46. Filed notice of appeal by pltff. to the Supreme Court of the United States.
	17	Mailed notice of filing notice of appeal.
July	15	Made, Mailed Record on Appeal Supreme Court of the U.S.

In the United States District Court for the Northern District of California

No. 48303

Filed November 30, 1967, Clerk U. S. District Court, San Francisco

[TITLE OMITTED IN PRINTING]

COMPLAINT FOR THREE JUDGE COURT, DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF

I

This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. 1983 to secure rights, privileges and immunities established by the Fourteenth Amendment to the Constitution of the United States and the Social Security Act, 42 U.S.C. 301, *et seq.*, and the regulations promulgated thereunder.

II

Jurisdiction is conferred on this Court by 28 U.S.C. 1343(3) and (4) providing for original jurisdiction of this Court in suits authorized by 42 U.S.C. 1983; and jurisdiction is further conferred on this court by 28 U.S.C. 2201 and 2202 relating to declaratory judgments.

III

This is a proper case for determination by a three judge Court pursuant to Title 28 U.S.C. 2281 and 2284, in that it seeks an injunction to restrain the defendants from applying, enforcing, executing and implementing Sections

12200, 12201 and 10950 of the California Welfare and Institutions Code (annexed hereto as Exhibit A) and the regulations promulgated thereunder, insofar as these statutes and regulations require termination, suspension or reduction of financial aid in the form of Old Age Security (OAS) prior to granting of notice and opportunity to be heard, on the grounds of the invalidity of said statutes and regulations under the Constitution and laws of the United States.

IV

This action seeks an injunction and declaratory judgment restraining the enforcement of and declaring unconstitutional the aforesaid state statutes and state-wide regulations, on their face and as applied and interpreted by defendants, on the grounds that said statutes and regulations, and actions taken pursuant thereto, deny to plaintiffs the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the "fair hearing" guaranteed by the Social Security Act, in that said statutes and regulations deny to plaintiffs an opportunity for a hearing prior to termination and withdrawal of financial aid under the OAS program.

V

Plaintiff Mae Wheeler is an adult citizen of the United States and a resident of the City and County of San Francisco, State of California.

VI

Plaintiff Wheeler brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and all other recipients who are similarly situated. All OAS recipients are similarly affected by the statutes and regulations challenged herein in that all said recipients

are by statute and regulation made subject to peremptory *ex parte* termination of their aid. The persons in the class are so numerous as to make joinder impractical; there are common questions of law and fact; plaintiff's claims are typical of the claims of the class; and the representative party will fairly and adequately protect the interests of the class.

VII

Defendant John Montgomery is the Director of the California Department of Social Welfare and is charged with statewide administration of the OAS program and with establishing rules and regulations to carry out the statutory provisions of said program.

Defendant Ronald Born is General Manager of the San Francisco City and County Department of Social Services and is responsible for administration of the OAS program in the City and County of San Francisco, State of California.

VIII

The OAS program created by Section 12000, *et seq.* of the California Welfare and Institutions Code, provides financial aid to persons over sixty-five years of age. Persons who meet the statutory criteria receive financial aid as a matter of statutory entitlement.

IX

At all times relevant hereto the State of California and defendants, in order to receive federal funds for the OAS program of the State of California, have been required by the Social Security Act, 42 U.S.C. § 301, *et seq.*, to have formulated a "state plan" for said program in conformity with the provisions of the Act and the United States Constitution. The Social Security Act, 42 U.S.C. § 302(a)(4)

as interpreted by regulations of the United States Department of Health, Education and Welfare require that a "state plan" provide for granting an opportunity for a fair hearing before the State agency to any individual aggrieved by an action of a County Department of Social Welfare.

X

Plaintiff Mae Wheeler is a seventy-five year old widow who had been receiving OAS continuously for thirteen years until her aid was terminated.

XI

Defendants have established plaintiff's total monthly needs at $158.55. This figure includes plaintiff's regular allotment for food, rent, clothing, transportation, and other necessities, plus added allowances for required telephone service ($2.70), laundry ($3.00), household remedies ($4.00) and a special medical diet ($11.35). Until September 1, 1967, defendants had granted plaintiff $113.95 monthly; the remainder of plaintiff's needs being met by monthly OASDI (Social Security) payments of $44.60. In addition, by virtue of her OAS eligibility, plaintiff was entitled to complete free medical treatment and hospitalization under the Medi-Cal program.

XII

Without prior notice defendants withheld plaintiff's September 1, 1967 OAS check.

XIII

On or about September 14, 1967, defendants informed plaintiff that her OAS was being withheld because of plaintiff's alleged transfer of approximately $4,000.00 in insurance proceeds to her deceased son's nephew in satisfaction of a pre-existing debt owed by her deceased son to said nephew.

XIV

In September and October, 1967, plaintiff, assisted by a social worker from the Public Health Authority, attempted to have her OAS restored.

XV

By letter dated November 7, 1967, plaintiff was informed that her OAS was discontinued effective August 31, 1967. The basis of the discontinuance was ineligibility due to transfer of personal property with the intent to reduce plaintiff's holdings to a sum within the maximum amount permitted to be retained by an OAS recipient. It was not and is not alleged that plaintiff had or has retained any money for her own use or benefit as a result of her son's death.

XVI

On November 16, 1967, after seeking advice, plaintiff, through her authorized representative, filed an appeal and request for a hearing and a further request that her aid be restored and continued until a decision after hearing. (A copy of plaintiff's representative's letter requesting restoration of aid is attached hereto as Exhibit B.) No answer to said letter has been received to date; aid has not been restored, nor has a hearing been scheduled.

XVII

At present, plaintiff has no assets to pay her December rent. Her total income (met through Social Security and the County General Assistance program) is projected at $98.50 per month, although defendants have calculated plaintiff's minimum needs to be $158.55 monthly. To date, plaintiff has only received a $15.60 emergency food order under the General Assistance program.

XVIII

Plaintiff is in extremely poor health and was hospitalized on or about November 26, 1967. No money for plaintiff's medical expenses or special medical needs is now being granted.

XIX

Section 10950 of the California Welfare and Institutions Code, prescribing the hearing procedure in the OAS program, and Sections 12200 and 12201 prescribing the manner of termination or reduction of aid in the OAS program on their face and as interpreted and applied to plaintiff and members of her class, violate the rights of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and the "fair hearing" guaranteed by the Social Security Act in that said statutes and the regulations adopted in enforcement thereof authorize and require effective action terminating, suspending and revoking financial aid prior to the granting of reasonable notice and opportunity for a hearing. The termination and withdrawal of financial aid may, under the regulations, extend for a period of several months before a hearing is held and a decision is rendered, even though plaintiff had been receiving such aid and is in vital need of such aid for food and shelter and medical care and even though plaintiff is prepared to prove that she is and has been eligible.

XX

Plaintiff has no adequate remedy at law and defendants will continue to cause plaintiffs irreparable injury unless enjoined by this Court.

Wherefore, plaintiff respectfully prays on behalf of herself and others similarly situated, that this Court:

1. Assume jurisdiction of this cause and convene a three judge Court pursuant to Title 28 U.S.C. § 2281.

2. Enter a temporary restraining order and a preliminary injunction ordering the defendants to grant plaintiff's request for restoration and continuation of aid until the holding of a hearing and the issuance and implementation of a decision by the State Department of Social Welfare, or until the determination of this cause.

3. Enter a declaratory Judgment pursuant to Title 28 U.S.C. 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Sections 10950, 12200 and 12201 of the California Welfare and Institutions Code and the regulations issued pursuant thereto violate the Fourteenth Amendment to the United States Constitution and the Social Security Act on their face and as applied, insofar as they authorize and require termination, suspension or revocation of aid prior to granting reasonable notice and opportunity for a hearing.

4. Enter a preliminary and permanent injunction restraining the defendants, their successors in office, agents and employees from terminating, suspending or revoking the aid of any OAS recipient prior to the granting of reasonable and adequate notice and opportunity for a hearing which satisfies the standards of due process of law.

5. Allow plaintiff her costs herein, grant her and all others similarly situated such additional or alternative relief as the Court may deem to be just and appropriate.

Respectfully submitted,

PETER E. SITKIN
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EXHIBIT A (to complaint)

STATUTES

CALIFORNIA WELFARE AND INSTITUTIONS CODE:

Section 12200. *Grounds; report of suspension; effect of eligibility for medical assistance.* The county may for cause, and upon instructions so to do by the department, shall cancel, suspend, or revoke aid. Upon request of the department, an immediate report of every suspension shall be made to the department stating the reason for the suspension and showing the action of the board of supervisors in approving the suspension.

Eligibility for medical assistance for the aged does not constitute cause for retroactive cancellation, suspension, or revocation of aid.

Section 12201. *Notice to recipient.* If the board of supervisors, in accordance with Section 12200, cancels, suspends, or revokes aid, the recipient shall be immediately notified in writing of the county's action, the date thereof, and of the reason therefor and the recipient's right to appeal therefrom.

Section 10950. *Opportunity; recipient defined.* If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of aid or services, or if his application is not acted upon with reasonable promptness, or if any person who desires to apply for such aid or services is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the department, be accorded an opportunity for a fair hearing.

As used in this chapter, "recipient" means an applicant for or recipient of aid or services except aid or services exclusively financed by county funds.

EXHIBIT B (to complaint)

November 16, 1967

State Department of Social Welfare
Fair Hearing Section
1407 Market Street
San Francisco, California 94103

Re: Mrs. Mae Wheeler
1855 15th Street
San Francisco, California
OAS #38-10-56380

Gentlemen:

Mrs. Wheeler has authorized me to represent her in her request for a Fair Hearing and in other proceedings necessary to have her Old Age Security payments immediately re-instated.

Since September 1, 1967, Mrs. Wheeler has not received any old age assistance because the local Social Services Department ruled that she transferred some of her deceased son's property in order to qualify for aid. This decision is contrary to the facts and a misapplication of the law and regulations—I request an immediate fair hearing.

As you should be aware, Mrs. Wheeler is 75 years old, and in extremely poor health. Her regular assistance budget includes money for a special diet as well as other vital additional items. At the present time, my client must live on Social Security payments of $44.00 monthly. She has no other income or assets. I hereby request that your department grant Mrs. Wheeler continued full assistance pending the decision of the fair hearing—she cannot survive without this money.

By letter dated November 7, 1967, Mrs. Wheeler was informed that her grant was discontinued effective August 31, 1967, because of "ineligibility due to transfer of personal property." On November 1, 1967, she had been informed by letter that "Your September and October, 1967, warrants which were withheld, will be decreased to zero because of lump sum death benefits received by beneficiary which resulted in overpayments in August and September." Mrs. Wheeler had first discovered that her eligibility was questioned when she inquired why she had not received her regular September 1st check.

The San Francisco Department challenges Mrs. Wheeler's payment to her grandson, Bobby Lee Wheeler of the proceeds of a Veterans Insurance Policy left by her son, R. L. Wheeler who died February 5, 1967. There is no question that the policy was actually paid to Bobby Lee Wheeler, and that Mrs. Wheeler no longer has any money remaining.

The Department relies on Section 41-321.321, PSS Manual [Applicant or Recipient Unable to Account for Disposition of Property], as the basis of its action. Assistance was discontinued in spite of Mrs. Wheeler's explanation that her son while in the hospital following his heart attack made her promise to pay the policy over to his nephew. Mrs. Wheeler has supplied the Department with two affidavits from her grandson explaining in detail the circumstances of the original loan and the arrangements for its repayment as well as her own four page affidavit on this subject.

Section 41-321.1 PSS Manual states:

> Although only the person concerned can state what his intent was in transferring property, his actions can support or contradict such statement and *his real intent can be determined only by consideration of all the facts.* (emphasis added)

Here all the facts clearly substantiate Mrs. Wheeler's claim and rebute any possible presumption that she was attempting to illegally remain eligible for assistance.

Additionally, the Department's reduction to zero of Mrs. Wheeler's September and October grant is violative of the law. Appellant also reserves her rights to present all relevant testimony and argument challenging every aspect of the local department's action of suspending, reducing and discontinuing her grant.

Mrs. Wheeler stated in her October 18th letter (accompanying the material she submitted to her social worker), "my situation has become desperate as I do not have enough money to live on without my OAS grant." As Mrs. Wheeler has a constitutional right to a hearing prior to discontinuing of her old age assistance, immediate resumption of assistance prior to the hearing is required.

If I do not hear from you within one week, I will be forced to resort to court action.

Sincerely,

MARVIN S. KAYNE
Attorney at Law

By .....
STEVEN J. ANTLER

SJA/aee
CC: Commissioner John Montgomery

AUTHORIZATION

I hereby authorize as my representatives in connection with this welfare appeal: Marvin S. Kayne, Esq., Peter E. Sitkin, Esq., and Mr. Steven J. Antler, 2701 Folsom Street, San Francisco, California.

Dated: November 16, 1967.

/s/ MRS. MAE WHEELER

.....
Mrs. Zulma Mae Wheeler

In the United States District Court for the Northern District of California

[TITLE OMITTED IN PRINTING]

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

State of California
City and County of San Francisco—ss.

Mrs. Mae Wheeler, having been duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action.

2. I am a 75 year old widow who regularly resides at 1855 - 15th Street, City and County of San Francisco, a Public Housing Project for the elderly.

3. For approximately the last ten years my sole source of support has been Old Age Security (OAS) and Social Security (OASDI) payments.

4. My last OAS check came on about August 1, 1967, and I haven't received any money under the OAS program since that date.

5. The reasons given for terminating my OAS are completely untrue. I transferred my deceased son's insurance policy to his nephew to satisfy my son's debt. I never intended to affect my OAS eligibility. Through my representative, I requested continued OAS assistance until I could vindicate myself at a fair hearing.

6. I was living on my allowable reserve income and my Social Security payments ($44.60 monthly) until about November 10, 1967, when I ran completely out of funds.

7. On or about November 25, 1967, I finally received an emergency food order for $15.60 and have been promised $43.90 monthly from the County General Assistance Program.

8. I have no money whatsoever on hand now. I can't pay my December rent of $49 or buy any household or other items I need.

9. I am a diabetic who needs a special diet of foods such as meats and sugar free fruits, which are much more expensive than regular foods. I have difficulty buying these items on my full OAS budget.

10. I also suffer from heart disease and high blood pressure. I am currently confined to Hahnemann Hospital on doctor's orders as a result of my many ailments, but I expect to be released from the hospital within the next few days.

11. I am extremely worried and nervous because I don't know how I can possibly live without my full OAS grant.

/s/ MRS. MAE WHEELER

.....

Mrs. Mae Wheeler, Affiant

In the United States District Court for the Northern District of California

[TITLE OMITTED IN PRINTING]

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

State of California
City and County of San Francisco—ss.

ARTHUR C. AGNOS, being duly sworn, deposes and says:

I received a Master of Social Work Degree (MSW) in April, 1966. I have been Assistant Director of Human Relations and Social Services with the San Francisco Public Housing Authority since September, 1966.

Mrs. Mae Wheeler was referred to my office by one of the Housing Authority's Review Clerks. When she saw the Review Clerk, she expressed concern about not receiving her OAS check.

Mrs. Wheeler called my office on September 14, 1967, claiming that she had not received her OAS check and her situation was becoming more and more desperate. She seemed extremely anxious and was crying. I reassured her that I would help her and would call the Department of Social Services.

On the same day, September 14, I called Mrs. Wheeler's welfare worker, Mrs. Geraldine Palmer, and asked for clarification of the situation. She explained that Mrs. Wheeler's check had been suspended until an investigation could be made. She told me that, since I was not Mrs. Wheeler's representative, she could not discuss the case with me. How-

ever, she did tell me that the Department had received an anonymous phone call telling them that Mrs. Wheeler had received an inheritance and should not be receiving welfare assistance. I asked why Mrs. Wheeler had not been told this and she explained that she had been away on vacation and had just returned to a pile of work. I stressed the fact that Mrs. Wheeler was an emergency situation and merited immediate attention. I strongly questioned the fact that the OAS check had been cut off on the basis of an anonymous phone call without any discussion with Mrs. Wheeler. I demanded immediate action to correct the situation. The welfare worker said that she would see what she could do.

Shortly after my telephone conversation with the welfare worker, I received a call from her supervisor, Mrs. Ream, who questioned my involvement in the case. I explained that part of my job as a social worker with the Housing Authority often necessitated helping Housing Authority residents with welfare problems. More specifically, Mrs. Wheeler had requested that I act in her behalf as she was at a loss as to what to do.

The supervisor refused to discuss the case with me stating that the problem was between the Department and the Recipient and the Department would take it up "in our good time." I refused to accept the statement that the Department would take the situation up "in our good time" as I was acutely aware of Mrs. Wheeler's increasingly desperate condition. I again strongly disagreed with the way in which Mrs. Wheeler had been treated on the basis of an anonymous phone call. I insisted that something be done immediately to correct the situation. The supervisor explained that the assigned worker had been on vacation and could not see Mrs. Wheeler. I questioned delaying action on a matter which involved the major part of a 75 year old ill woman's income, and that I was not satisfied with the situation.

I immediately called Miss Trudy Kanner, Supervisor of the Community Services Division, explained the situation and requested an immediate opportunity to do something to get Mrs. Wheeler's aid restored. She agreed to look into the matter immediately. Shortly thereafter Miss Kanner called back to tell me that we would have the opportunity on Monday, September 18.

I arranged for Mrs. Wheeler to sign a "release of information" in order that the Department would discuss the case with me. On Friday, September 15, I was present during a home visit by the welfare worker who told us what statements were needed. Over the weekend I helped Mrs. Wheeler gather and prepare the required information.

On Monday, September 18, I appeared with Mrs. Wheeler and a relative at the Department of Social Services. We were met by Mrs. Wheeler's welfare worker and a man who was introduced as a representative from the County Fair Hearings Section. I presented the prepared statements to the welfare worker who briefly scanned them. Mrs. Wheeler stated that she had not intended to deceive the Department, but was only carrying out her late son's dying wish. Mrs. Wheeler asked when her aid would be restored. The welfare worker replied that at this meeting she could only receive the prepared statements from us. In turn, she would forward them to administrative superiors for a decision. Mrs. Wheeler asked how long it would take for a decision. The representative from Fair Hearing Section stated that she would be notified about the decision. I asked the representative what his role was in today's meeting. He answered that he was only present as an "observer." This entire meeting lasted approximately ten minutes and absolutely no decision was rendered. It was only to present the prepared statements to the welfare worker.

On September 22, I called the welfare worker to learn of any decision. She informed me of additional information which was required to amplify on the earlier statements. A letter was received outlining the additional information required. I immediately set about compiling the considerable amount of additional information. This involved writing to Texas for a statement from another ill son, supplemental statements from a nephew, driving to Milpitas with Mrs. Wheeler to try to determine the disposition of a home purchased by her deceased son in 1962.

On October 16, 1967, Mrs. Wheeler presented the additional information required to the welfare worker.

On October 19, 1967, the welfare worker telephoned Mrs. Wheeler and me to inform us that her OAS grant had been restored. She told me that there had been a transfer of funds but it was not considered intentional, and the aid was to be restored.

On October 23, 1967, another phone call from the welfare worker informed Mrs. Wheeler and me that the aid was not to be restored. The decision had been reversed by administrative higher ups. She suggested that Mrs. Wheeler could request a fair hearing.

At this point I felt I had exhausted all of my professional resources. I recommended to Mrs. Wheeler that we apply for legal assistance from the San Francisco Neighborhood Legal Assistance Foundation.

/s/ ARTHUR C. AGNOS

Arthur C. Agnos

TEMPORARY RESTRAINING ORDER

In the United States District Court
for the Northern District of California, Southern Division

Civil Action No. 48303

MAE WHEELER, et al.,
Plaintiffs,

v.

JOHN MONTGOMERY, et al.,
Defendants,

TEMPORARY RESTRAINING ORDER

The plaintiffs have filed this action to declare unconstitutional California Welfare & Institutions Code Sections 12,200, 12,201 and 10,950, which authorizes the termination, suspension or revocation of financial aid under the Old Age (OAS) program prior to the granting of reasonable and adequate notice and opportunity for a hearing. They have made application for the hearing of this cause for a declaratory judgment, preliminary and permanent injunction before a Three-Judge District Court pursuant to Title 28, United States Code, Sections 2281 and 2284.

This action coming on to be heard on December 1, 1967, on the motion of plaintiffs for a temporary restraining order, and adequate notice having been given to defendants; and the Court having considered the affidavits and memoranda presented and the arguments of counsel for all parties, and being fully advised in the premises, it makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Defendants withheld and thereafter terminated plaintiff Mae Wheeler's aid under the OAS program without affording her reasonable notice and an opportunity for a prior hearing.

2. Plaintiff Mae Wheeler's minimum monthly need as of August 31, 1967 was determined by defendants to be $158.55 and was met through direct Social Security benefits of $44.60 and an Old Age Security grant of $113.95. As a consequence of the termination of Old Age Security, she now has been promised County General Assistance in the sum of $53.90 a month which, when added to her direct Social Security payments totals $98.50 a month.

3. Defendants have refused plaintiff Mae Wheeler's request for restoration and continuation of aid under the OAS program.

4. Defendants' withdrawal and termination of aid and their continued refusal to reinstate plaintiff Mae Wheeler's aid has caused and is causing plaintiff Mae Wheeler immediate and irreparable injury in that she will not have sufficient funds with which to subsist on a day-to-day basis without her full OAS payment.

5. Irreparable injury has been shown only with respect to plaintiff Mae Wheeler and no proof so far has been presented of any others in the class who are likely to suffer immediate and irreparable injury.

CONCLUSIONS OF LAW

Defendants' termination of plaintiff Mae Wheeler's aid under the OAS program pursuant to California Welfare & Institutions Code Sections 12,200 and 12,201 and the regulations promulgated thereunder without a prior hearing

and reasonable notice raises a substantial question as to whether the due process clause of the Fourteenth Amendment to the U.S. Constitution has been violated.

Upon the foregoing, it is, by the United States District Court for the Northern District of California, Southern Division, this 1st day of December, 1967

ORDERED:

1. That the defendants John Montgomery and Ronald Born, their agents, servants, and employees be, and they are hereby restrained effective December 1, 1967 from enforcing against the plaintiff Mae Wheeler the provisions of the California Welfare and Institutions Code Sections 12,200, 12,201, and 10,950, et seq., and implementing the Rules and Regulations of the State Department of Social Welfare, so that Old Age Assistance shall be restored to plaintiff Mae Wheeler forthwith in the amount to which she may be found eligible in order to meet her needs as established under the Old Age Security program until such time as a determination is made by this Court regarding plaintiff's application for convening a Three-Judge Court pursuant to Title 28 U.S.C. 2281 and 2284.

2. That action on plaintiff's application for the convening of a Three-Judge Court shall be deferred for 30 days until January 2, 1968, at 5 p.m. without prejudice to any of the parties herein.

ALFONSO J. ZIRPOLI
District Court Judge

Signed on December 6, 1967.

APPROVED AS TO FORM:
THOMAS C. LYNCH
Attorney General

By ELIZABETH PALMER
Deputy Attorney General

Attorneys for Defendant
JOHN MONTGOMERY

THOMAS M. O'CONNOR,
City Attorney

By.....
Raymond D. Williamson, Jr.
Deputy City Attorney

Attorneys for Defendant Ronald Born

MEMORANDUM OPINION PERMITTING CLASS ACTION AND CERTIFYING NECESSITY OF CONVENING THREE-JUDGE DISTRICT COURT.

United States District Court
For the Northern District of California
No. 48303

Mae Wheeler, individually and on behalf of all others similarily situated,
Plaintiffs,

vs.

John Montgomery, individually and in his capacity as Director of the California State Department of Public Welfare, and Ronald Born, individually and in his capacity as General Manager of the San Francisco City and County Department of Social Services,
Defendants.

MEMORANDUM OPINION AND ORDER DENYING CONTINUANCE, ORDER PARTIALLY VACATING PRIOR ORDER, ORDER PERMITTING CLASS ACTION, ORDER DENYING MOTIONS TO INTERVENE, ORDER DENYING MOTION TO MODIFY TEMPORARY RESTRAINING ORDER, NOTIFICATION AND CERTIFICATION OF NECESSITY OF THREE JUDGE COURT.

FACTS AND PROCEEDINGS TO DATE

Plaintiff has filed a complaint, in forma pauperis, seeking injunctive and declaratory relief against a California welfare practice authorized by state statutes which permit the termination of old age security benefits prior to affording the recipient a hearing on his supposed ineligibility. The

statutes which are involved are CAL. WELF. & INST. CODE §§ 12,200, 12,201. The complaint is in the form of a class action.

The facts alleged pertaining to the named plaintiff are as follows: As of August 30, 1967, Mrs. Wheeler was receiving old age benefits in the amount of $113.95. Defendants received information that Mrs. Wheeler had received some $6,000.00 in insurance proceeds and had transferred the money to her grandson. Defendants determined that Mrs. Wheeler's alleged action rendered her ineligible for continued benefits because she had had more money than the maximum permitted while maintaining eligibility.

Mrs. Wheeler's benefit checks had, at the time the suit was filed, been withheld since September 1, 1967, although she came to receive general assistance in the amount of $53.90 until December 1, 1967, the date on which this court heard argument on the propriety of a temporary restraining order restoring old age benefits and on the need for a three judge court.

On December 6, 1967, this court issued a temporary restraining order to avoid irreparable injury to Mrs. Wheeler, the court having been satisfied by plaintiff's showing that such injury was occurring. The court also stayed further proceedings for thirty days to permit Mrs. Wheeler to appeal to a state referee to adjudicate her dispute with the County of San Francisco.

Prior orders in no way were a determination of the merits of plaintiff's claims, but merely endeavored to preserve the status quo pending the court's determination of the questions involving a three judge court and a class action. The court recognizes that the result of the appeal will in no way affect the existence of a case or controversy between the parties over the constitutionality of the statutes

here challenged. No restraining order was issued applicable to any other member of the alleged class because no showing was made of an imminent threat of irreparable harm. The court expressly allowed appropriate showing to be made as instances of threatened irreparable harm arose.

Since December 6, 1967, plaintiff's counsel have made motions for intervention and a motion for modification of the temporary restraining order to include the entire alleged class. The court deems the showings made with respect to persons other than Mrs. Wheeler inadequate to warrant further injunctive relief at this time.

Defendants' counsel have requested a continuance of the argument scheduled on some of the motions and on the questions of the three judge court and class action. Having heard further argument on December 15, 1967, the court deems that no continuance is necessary, that the pleadings constitute a more-than-adequate record on which to base rulings on the matters now pending before the court, and that the court's duty is to determine certain of the questions involved by referring to the complaint in this action. The court is satisfied that any previous stay of these proceedings to permit further argument has been rendered unnecessary by the court's own examination of the issues involved in this case and by further argument and documents filed by the parties.

JURISDICTION: NEED FOR A THREE JUDGE COURT

Plaintiff's basic contention is that to terminate old age benefits without first giving the recipient a hearing is to deny a recipient due process of law. Plaintiff contends that the right to a hearing prior to termination may be found either in the due process clause, U.S. Const., amend. 14,

or in portions of the Social Security Act, specifically 42 U.S.C. § 1382(a)(4) and certain regulations promulgated pursuant thereto. Plaintiff's attack is merely on the procedural method by which aid is terminated. She disclaims any contention that under the facts as alleged by defendants to exist, aid may not be terminated. She merely says that a hearing on the question of eligibility must be held prior to the termination.

Actually, three potential constitutional challenges lurk in the pleadings of this case: (1) California's termination statutes are repugnant to the due process clause of the fourteenth amendment; (2) California's termination statutes are repugnant to provisions of the Social Security Act; (3) if California's termination statutes are not repugnant to the Act, the Act is repugnant to the due process clause of the fifth amendment. While the second enumerated contention does not require a three judge court, *Swift & Co., Inc. v. Wickham,* 382 U.S. 111 (1965), the first and third do, 28 U.S.C. §§ 2281, 2282.

The requirements of § 2281 are satisfied in this case: a state statute is challenged as repugnant on its face to the federal constitution; an injunction is sought; a state officer is a defendant; the statute has statewide application.

This court cannot say the federal question presented is not substantial in the sense that term is used with reference to the propriety of a three judge court. Just "how much due process" is required is a difficult question to decide when administrative proceedings are involved. Also, the precise question presented—whether a hearing prior to administrative action is required—is a difficult question which has engendered considerable debate and litigation. Though not resolved, a situation strikingly similar to the one in this case has been presented to and reached the Supreme Court. *Thorpe v. Housing Authority of the City of Durham,* 386 U.S. 670 (1967).

Recent years have seen an increasing number of decisions dealing with the question of public entities attempting to terminate "benefits" without hearings. *E.g., Slochower v. Board of Higher Education of New York City,* 350 U.S. 551 (1956); *Wasson v. Trowbridge,* 382 F. 2d 807 (2d Cir. 1967); *Dixon v. Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961), *cert. denied,* 368 U.S. 930 (1961); *Teel v. Pitt County Board of Education,* 272 F. Supp. 703 (E.D. N.C. 1967). *But cf., e.g., Cafeteria & Restaurant Workers Union v. McElroy,* 367 U.S. 886 (1961); *Vitarelli v. Seaton,* 359 U.S. 535 (1959). See also 1 Davis, Administrative Law §§ 7.04-7.20; Silver, *How to Handle a Welfare Case,* 4 Law in Trans. Q. 87, 100 n. 54 and accompanying text (1967); Note, *Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84, 93 (1967). Based on a review of the above and other authorities, this court must conclude that the precise federal question presented by this case is substantial and that a three judge court is required to ultimately dispose of the issues.

CONSIDERATIONS PERTAINING TO A CLASS ACTION

The prayer for declaratory and injunctive relief raises common issues of law for each member of the class; namely, whether a termination of benefits without a prior hearing denies a recipient his rights under the United States Constitution. All members of the class are governed by the same California procedures and statutes.

The court concludes that the prerequisites of Fed. R. Civ. P. 23(a) are satisfied. Similarly, the requirement of Fed. R. Civ. P. 23(b)(2) is satisfied.

The foregoing memorandum opinion and the orders which follow dispose of the matters presently scheduled

to be heard on January 2, 1968, and of all other preliminary matters now pending before this court. Hence, absent further pleadings by the parties, no further action or appearances will be required of the parties prior to the convening of the three judge court.

ORDERS

1. The court being satisfied that a continuance would serve no useful purpose in disposing of the merits of this case, It Is Ordered that defendants' motion for a continuance is denied.

2. The court being satisfied that further delay in the resolution of pending matters would not aid the court in ruling on such matters, and the court having examined the pleadings and authorities relevant to the rulings made this day, It Is Ordered that any prior order of this court is vacated to the extent such order stayed further proceedings preliminary to the court's ruling on any matter ruled upon this day.

3. Pursuant to Fed. R. Civ. P. 23(a), (b)(2), (c)(1), and (d)(2), It Is Ordered that a class action for declaratory and injunctive relief may be maintained, the class to consist of all recipients of old age benefits subject to California termination statutes, and that plaintiff shall forward to the United States Attorney at San Francisco and to the Secretary of the Department of Health, Education and Welfare, notice of the pendency of this action, together with a copy of the pleadings heretofore filed with the court and with a copy of this memorandum opinion and these orders.

4. The court being satisfied that the showings heretofore made on behalf of the putative intervenors are not substantial enough to require intervention, and the court

being satisfied that the rights of all members of the class will be protected without the intervention, It Is Ordered that all motions to intervene on file on the date of this order are denied.

5. The court being satisfied that the showings heretofore made in support of the motion to modify the temporary restraining order are insufficient to justify further injunctive relief at this time by this court, It Is Ordered that the motion to modify the temporary restraining order is denied without prejudice to such reconsideration as may be appropriate of requests for interim relief.

6. The court will notify the chief judge of the ninth circuit that in this court's opinion a three judge court is required to resolve the issues in this case.

Dated: December 20, 1967

ALFONSO J. ZIRPOLI

United States District Judge

Filed Feb. 20, 1967

In the United States District Court
for the Northern District of California

[TITLE OMITTED IN PRINTING]

ANSWER TO COMPLAINT

Comes now the defendant RONALD BORN, individually and in his capacity as General Manager of the San Francisco City and County Department of Social Services, and answering the complaint of plaintiffs on file herein, admits, denies and alleges as follows:

I

Denies each and every, all and singular, generally and specifically, the allegations contained in paragraphs I, II, III, IV, VI, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XIX and XX of said complaint.

II

Answering the allegations of paragraph XIV of said complaint this answering defendant states that he has no information or belief upon the subject sufficient to enable him to answer any of the said allegations, and placing his denial on that ground, this defendant denies each and every, all and singular, generally and specifically, said allegations.

III

Answering the allegations of paragraph VII of said complaint, Ronald Born states that he is the Director of the Department of Social Services for the City and County of San Francisco.

IV

Answering the allegations of paragraph IX of said complaint, this defendant admits that, in accord with due process, a "fair hearing" is afforded any recipient who feels

aggrieved by a decision to terminate aid, and Mae Wheeler received such fair hearing on December 22, 1967.

V

Further answering the allegations of paragraph X of said complaint, this defendant states that plaintiff has been a recipient of old age security for a period of about ten (10) years.

VI

Further answering the allegations of paragraph XII of said complaint, this defendant states, on information and belief, that plaintiff was contacted by telephone on August 30, 1967, and, in that telephone conversation, admitted receiving and subsequently transferring funds received due to the death of her son; that plaintiff had not notified the Department of Social Services of the existence or disposition of these funds; and that no check was withheld until after plaintiff had admitted receiving and disposing of funds received due to the death of her son.

VII

Further answering the allegations of paragraph XVI of said complaint, this defendant states that a fair hearing was conducted on December 22, 1967, and plaintiff has been mailed her December check for Old Age Security.

Wherefore, defendant prays that plaintiffs take nothing by their complaint on file herein, that said defendant have judgment for his costs of suit herein incurred and for such other and further relief as to the court may seem proper.

Dated: December 26, 1967.

THOMAS M. O'CONNOR
City Attorney

RAYMOND D. WILLIAMSON, JR.
Deputy City Attorney

In the United States District Court
for the Northern District of California

[TITLE OMITTED IN PRINTING]

Civil Action No. 48303

ANSWER TO COMPLAINT

Comes now the defendant John Montgomery, individually and in his capacity as Director of the California State Department of Social Welfare and answering the complaint of plaintiffs on file herein, admits, denies and alleges as follows:

I

Denies each and every, all and singular, generally and specifically the allegations contained in paragraphs I, II, III, IV, VI, XI, XVII, XVIII and XX of said complaint.

II

Admits the allegations contained in paragraphs V, VII, VII, IX and XIV of said complaint.

III

Denies the allegations contained in paragraph X and alleges that plaintiff is a 75 year old widow who had been receiving Old Age Security continuously and in varying amounts since December 1959 to supplement her social security benefits which she currently receives in the amount of $44.60 per month.

IV

Answering the allegations contained in paragraphs XII and XIII of the complaint, this defendant is informed and believes and on the basis of such information and belief alleges that plaintiff was contacted by defendant county on August 30, 1967, and, in that telephone conversation

plaintiff admitted receiving and subsequently transferring the proceeds of a check in the sum of $4,582.15 to her grandson, Bobby Lee Wheeler. On the basis of such information and belief defendant further alleges that no Old Age Security check was withheld until after plaintiff had admitted receiving and disposing of said funds over six months previously and without at any time having notified defendant county of her receipt or transfer of said funds.

Defendant further alleges that while withholding plaintiff's Old Age Security check defendant county granted general assistance funds to plaintiff.

V

Denies the allegations contained in paragraphs XV and alleges that on or about November 2, 1967, defendant county took the following actions with respect to plaintiff:

1. Discontinued Old Age Security, effective August 31, 1967, and cancelled the subsequently withheld warrants, and

2. Requested repayment of all Old Age Security paid to the claimant for the period May 1 through August 31, 1967.

VI

Admits the allegations contained in paragraphs IX and XVI and alleges that the hearing referred to in said paragraphs came on for hearing on December 22, 1967.

That thereafter on January 12, 1968, the defendant John Montgomery, Director of the Department of Social Welfare, adopted the proposed decision of the hearing officer. A copy of said proposed decision of defendant John Montgomery is attached hereto as Exhibit 1. Said decision ordered that the plaintiff's claim be granted and that the defendant County restore Old Age Security, effective September 1, 1967, in the amount to which plaintiff-claimant is otherwise eligible and to cancel any demand made by

defendant county on plaintiff for repayment of Old Age Security for the period of May through August 1967.

VII

Denies the allegations contained in paragraph XIX and alleges that on January 19, 1968, defendant Director held a public hearing pursuant to California Government Code sections 11420 et seq. for the purpose of permitting individuals and others to present and discuss their views in regard to a proposed regulation amending sections 44-325.4, 44-235.44, 40-181.1, 40-181.32, and 40-1255 of the Public Social Services Manual of the State Department of Social Welfare. A copy of said proposed regulation is attached hereto as Exhibit 2. The explanatory statement issued by defendant Director (pursuant to Government Code section 11424) with respect to the proposed amendment of said regulation is attached hereto as Exhibit 3.

Defendant will ask leave of court to amend this Answer following defendant Director's action with respect to said proposed regulations.

Wherefore, defendant prays that plaintiffs take nothing by their complaint on file herein, that said defendant have judgment for his costs of suit herein incurred, and for such other and further relief as to the court may seem proper.

Dated: January 18, 1968

THOMAS C. LYNCH
Attorney General

RICHARD L. MAYERS
Deputy Attorney General

ELIZABETH PALMER
Deputy Attorney General

Attorneys for State Department of Social Welfare, John C. Montgomery, Director.

Exhibit 1 to Montgomery Answer

CONFIDENTIAL

Information in this decision is protected by Section 10850, Welfare & Institutions Code. Violation of this section is a misdemeanor.

Before the Department of Social Welfare
of the State of California

Adopted by the Department of Social Welfare
State of California
Director
Jan. 15, 1968
John C. Montgomery

State No. 38-10-56380

In the Matter of the Hearing of
MAE WHEELER
Claimant

PROPOSED DECISION

SUMMARY

Where it has not been established that the claimant transferred personal property for the purpose of maintaining eligibility to receive Old Age Security (OAS), she was eligible to receive that aid without interruption (Public Social Services Manual Section 41-321).

• • • • •

This matter, originally scheduled for hearing on December 15, 1967, was postponed and then came on for hearing

before Maurice Rosen, Referee for the State Department of Social Welfare, at 9 a.m., December 22, 1967, in Room 400, 1407 Market Street, San Francisco, California. The following persons were present:

Mrs. Mae Wheeler, claimant

Mr. Peter Sitkin, Attorney, Neighborhood Legal Assistance Foundation, and authorized representative of the claimant

Mr. Steven Antler, Law Clerk, Neighborhood Legal Assistance Foundation

Mr. Bobby L. Wheeler, grandson of the claimant

Mr. Arthur Agnos, Assistant Director, Human Relations, San Francisco Housing Authority, and witness for the claimant

Mr. J. P. Dowdall, Director, Social Services Program, San Francisco County Department of Social Services

Mrs. Jane Rand, Division Supervisor, Aged Program, San Francisco County Department of Social Services

Mrs. Anita Yao, Senior Supervisor, Aged Division, San Francisco County Department of Social Services

Mrs. Rosella Rheaume, Social Work Supervisor, Aged Division, San Francisco County Department of Social Services

Miss Geraldine Palmer, Social Worker, San Francisco County Department of Social Services.

Based on the evidence presented at the hearing, the Statement of Fact, Reason for Decision, and Order are as follows:

STATEMENT OF FACT

I

San Francisco County discontinued OAS, effective August 31, 1967, and has requested repayment of OAS granted

during the months of May through August 1967, on the grounds that during April 1967 the claimant had transferred personal property to her grandson in order to maintain her eligibility to receive OAS, and thereby rendered herself ineligible for public assistance as of May 1, 1967.

II

The request for a fair hearing was filed on November 21, 1967.

The claimant maintains that:

1. She transferred the funds in question to her grandson, Bobby Lee Wheeler, in order to carry out the wishes of her dying son, R. L. Wheeler.*
2. She did not make the transfer in order to qualify for aid or to remain eligible for aid.
3. She was and continues to be eligible to receive OAS.

III

The issues in this case are:

1. Whether the claimant transferred personal property in order to qualify for OAS.
2. Whether the claimant was eligible to receive OAS on the point of property during months subsequent to April 1967.*

IV

The claimant, a 75-year-old widow, had been receiving OAS continuously and in varying amounts since December 1959 to supplement her Social Security benefit, currently in the amount of $44.60 per month.

Although suffering from a heart condition and diabetes, she lives alone in a San Francisco Housing Authority apartment.

V

On February 5, 1967, the claimant's son, R. L. Wheeler, an ex-serviceman, died. On or about April 3, 1967, the claim-

*In December 1967, the county restored OAS pendente-lite pursuant to order of the Federal Court.

ant, as beneficiary of her son's veteran's insurance, received from the Veterans Administration a check for $4,528.15 and, on or about April 6, 1967, she turned this amount over to her grandson, Bobby Lee Wheeler.

VI

During the ensuing five months, the claimant was, on several occasions, in touch with her social worker regarding fluctuating needs and annual redetermination of eligibility** but it was not until August 30, 1967 that the county learned from an anonymous caller of receipt by the claimant of the proceeds of her late son's veteran's insurance and the transfer of these proceeds to her grandson.

VII

On or about August 30, 1967, the county placed a hold on the claimant's OAS warrants and, during the ensuing two months, undertook an intensive investigation of the circumstances surrounding the property transfer. There were numerous conferences involving the claimant, as well as her grandson and the assistant director for human relations at the public housing project, for the purpose of evaluating the disposition of the funds received by the claimant from her son's estate.* Although the claimant's OAS warrants were

---

**July 25, 1967.

*The County also learned that, on various dates during the spring and summer of 1967, the claimant had received the following additional proceeds from her son's estate:

1.	Back Wages	$ 110.22
2.	Printers Union benefits	1,100.00
3.	Social Security death benefits	255.00
4.	Veterans death benefit	250.00

However, it was likewise established by the county that the claimant had expended most of these funds for her son's funeral and for legal services in connection with the estate and that therefore, these funds of themselves would presumably not have affected her ongoing eligibility for OAS.

withheld during this period, the county granted some amounts of county general assistance to supplement the claimant's small monthly Social Security benefit.

VIII

On November 2, 1967, the county, having carefully weighed the evidence, including sworn statements of the several parties, in support of the claimant's allegation that she had transferred the insurance proceeds to her grandson because of her promise to her son, concluded that the transfer was in fact a transfer to maintain the claimant's eligibility to OAS and therefore, took the following actions:

1. Discontinued OAS, effective August 31, 1967 and cancelled the subsequent withheld warrants.
2. Requested repayment of all OAS paid to the claimant for the period of May 1 through August 31, 1967, and
3. Determined that the transferred assets, less the $1,200 allowable reserve, would have supported the claimant at the rate of $200 a month for sixteen-and-a-half months, or until September 1968, when she would presumably again qualify for OAS.

IX

In sworn statements submitted prior to the hearing as well as at the hearing, the claimant and her grandson, Bobby Lee Wheeler, declared that:

1. In 1962, the now deceased R. L. Wheeler borrowed from his nephew Bobby Lee Wheeler, $3,000 in order to purchase a home at 447 Heath Street, in Milpitas, California.
2. In 1964, R. L. Wheeler borrowed from Bobby Lee Wheeler, $750 in order to purchase an automobile.
3. After 1964, R. L. Wheeler borrowed smaller sums of money from Bobby Lee Wheeler and, although he made occasional repayments to Bobby Lee

Wheeler, the amount which the uncle owed the nephew by January 1967 totalled $4,200.*

4. Late in January 1967, R. L. Wheeler suffered a massive heart attack and lived for approximately one week thereafter. During the final week of his life, R. L. Wheeler, in the presence of the claimant and Bobby Lee Wheeler, asked the claimant to repay to Bobby Lee Wheeler from the insurance policy he had taken out in the claimant's name many years before, this debt of $4,200.**
5. R. L. Wheeler died on February 5, 1967 and, in accordance with his deathbed request, the claimant repaid to Bobby Lee Wheeler the full proceeds of the veteran's benefits ($4,528.15) which she received in April 1967. It was understood that Bobby Lee Wheeler would then remit to R. L. Wheeler's brother, O. L. Wheeler, of Texas, $300† to reimburse him for expense incurred by him in connection with attendance at R. L. Wheeler's funeral.
6. O. L. Wheeler then insisted that he had spent an additional $200 in connection with his trip to California at the time of his brother's funeral and, upon his insistence that he receive this additional money and to keep the family peace, Bobby Lee Wheeler remitted an additional $200† to O. L. Wheeler, even though this cut into part of the money his uncle R. L. Wheeler had owed to him.

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*Written records were not kept but uncle and nephew were allegedly fully aware of the amounts involved.

**R. L. Wheeler and his nephew Bobby Lee Wheeler had an especially close relationship and, although R. L. Wheeler reportedly owed other persons some $25,000 at the time of his death, he chose to have his nephew repaid from the proceeds of the insurance.

†Money order receipts, in the amounts of $300 and $200 respectively, from Bobby Lee Wheeler to O. L. Wheeler have been viewed by the county representative.

X

The county, in finding that the transfer was a transfer to maintain OAS eligibility, considered that:

1. The claimant, as beneficiary of her late son's veteran's insurance policy, was entitled to receive the proceeds of it to meet her own needs.
2. The claimant withheld information regarding receipt of the insurance proceeds during the period of April through August 1967, although she had ample opportunity to report the facts to her worker.
3. The claimant has been unable to submit adequate supportive documentary evidence to substantiate either Bobby Lee Wheeler's claim of R. L. Wheeler's indebtedness to him or R. L. Wheeler's acknowledgement of any such debt.

XI

At the hearing, the claimant's authorized representative submitted a memorandum and points of law in support of his argument that the claimant was bound by the terms of an oral trust to turn over the proceeds of her son's veteran's pension to her grandson, Bobby Lee Wheeler.

REASON FOR DECISION

I

Section 41-321 of the Public Social Services Manual provides that transfer of property made to qualify for aid results in ineligibility. Circumstances under which the ineligibility is presumed to exist as the result of property transfer includes a transfer of property to reduce the remaining holdings within the statutory maximum.

II

The same section, under the heading of *Interpretation* (guide material), includes the following:

> The reason an applicant transferred property, i.e., his actual intent in doing so, is the single most essential element to be considered in determining the effect of the transfer upon his eligibility. A transfer of property is, in itself, disqualifying only when the transferor's reason for making the transfer was to qualify for aid . . .
>
> In determining the transferor's intent, it is necessary to evaluate his stated reason for the transfer and the consistency of such statement with the known facts. The consideration received for the property transferred may not have been adequate; the transfer may have been ill-advised and/or the transferor, in making the transfer, may have exercised poor judgment. However, these facts alone do not automatically establish that a transfer was disqualifying. The motive of the transfer must be carefully scrutinized, the important determination being the transferor's actual reason for the transfer and the relationship of that reason to his application for aid.

III

We find, on a preponderance of the evidence, that the claimant did not transfer personal property for purposes of qualifying for OAS.

IV

Our conclusion in this respect is based upon the following:

1. In the absence of any internal inconsistencies or other evidence to the contrary, we have credited the testimony of the claimant and Bobby Lee Wheeler that R. L. Wheeler owed his nephew, Bobby Lee Wheeler, $4,200 and that, just prior to his death, he had asked the claimant to repay this debt from the proceeds of his veteran's insurance policy.
2. Because of this deathbed request, the claimant felt that she had a moral, if not legal, duty to transfer

the proceeds of the insurance policy to her grandson.

3. Under these circumstances, it cannot be concluded that the transfer was a transfer to qualify for aid within the meaning of the cited regulation (although there was failure on the part of the claimant to meet her reporting responsibilities).*

ORDER

The claim is granted:

1. San Francisco County shall restore OAS, effective September 1, 1967, in the amount to which the claimant is otherwise eligible.
2. San Francisco County shall cancel any demand for repayment of OAS for the period of May through August 1967.

I hereby submit the foregoing which constitutes my report of the proceedings and proposed decision in the above-entitled matter, and recommend its adoption as the decision of the Director of the State Department of Social Welfare.

/s/ MAURICE ROSEN

.....

Maurice Rosen
Referee

Dated: January 12, 1968

Exhibit 2 to Montgomery Answer

DETERMINATION OF ELIGIBILITY

40-173 COUNTY DEPARTMENT RESPONSIBILITY FOR NOTIFYING APPLICANTS AND RECIPIENTS (Continued)

*cf. Public Social Services Manual Section 40.105.

.4 *Notification When Application is Withdrawn*

Use Form DPA 8, Notice to Applicant Who Withdraws Application. If the county elects to deny the application, use Form ABCD 239.

.5 *Notice to Recipient of his Responsibility*

Use Form 239 C, Important Notice to All Recipients, as specified below:

.51 At the time of the initial warrant on new cases or restorations.

.52 At least semiannually on all continuing cases.

.53 At other times when the county believes notification would be of particular significance. (See Section 40-171.)

.6 *Confirmation of Guidance and/or Suggestions Regarding Sale of Property*

Regarding the sale of his real or personal property, written confirmation shall be given to the applicant or recipient. Such written confirmation shall include a statement regarding the effect of the proposed sale on eligibility. A copy of such confirmation shall be filed in the case record.

40-181 CONTINUING ACTIVITIES AND INVESTIGATION

.1 *General County Responsibility, AB, ATD, OAS, AFDC*

.11 The county paying aid is responsible for continuing investigation to insure payment only to eligible recipients in the correct amount, to assist recipients to meet their financial and service needs as fully as possible, and to make maximum use of their resources and capacities. The decision as to the frequency of investigation is based upon consideration of all pertinent circumstances in each

case. The reinvestigation shall not interfere with the prompt payment of aid unless there are reasonable grounds to suspect that a change has occurred which may result in ineligibility or in overpayment which could not be adjusted within the adjustment period.

Aid shall not be withheld, suspended, or terminated without compliance with Section 44-325.43. In *AB* or *ATD* when disability or blindness is the only eligibility factor that is in question the person shall be considered *medically* eligible such time as an official notification from the State Department of Social Welfare declaring him ineligible is received by the county.

.12 The county is responsible for continuing investigation to identify promptly service needs of the recipient, including medical assistance, and to provide these services. This includes provision of protective services and initiation of guardianship or conservatorship proceedings as needed. (See Services chapter and Section 40-151.)

AID PAYMENTS

44-325 CHANGES IN AMOUNT OF PAYMENT (Cont.)

.11 If the change in the aid payment (as determined in accord with 44-315.5, amounts to less than $2 per month, such change is not to be made. *AFDC*

.12 *Decrease:* Where the required change *is a decrease* of $2 or less, it shall be effective not later than the second month following that in which the changed circumstances were reported, and no adjustment is to be made for overpayment of $2

or less in the month of reporting or in the following month. *ATD*

.13 *Increase:* When the change in circumstances will continue for only one or two months, and the amount of the *increase* would be $2 or less, no change is made in the continuing authorization.

.2 *Change in Income or Need—Known in Advance, AB, ATD, OAS, AFDC*

If a change in income or need is known in advance, any necessary change in the amount of payment is made effective with the month in which the changed circumstances will occur.

.3 *Discontinuance*

If a recipient's circumstances change to the extent that he no longer meets the eligibility requirements, aid

shall be discontinued effective the last day of the month for which the last payment was made. (See Section 44-315 re appropriate action when the recipient is no longer eligible to a cash grant but remains eligible to medical assistance as a medically needy person.)

.4 *Withheld Payment, AB, ATD, OAS, AFDC*

.41 Withheld Payment—Defined
A withheld payment is one which is held beyond the usual delivery date while information concerning needs, income or basic eligibility is investigated, subject to Section 44-325.43.

.42 Limitations on and Requirements for Withholding of Aid Payment Subject to the following limitations, aid payments shall be withheld when further investigation is necessary to determine continuing eligibility.

.421 Recipients should have the assurance of regular and continued aid payment without interruption or delay. Accordingly, an aid payment may be withheld beyond the usual delivery date only when evidence which is both substantial in nature and reliable in source is received by the county, indicating:
a. Probable ineligibility of the recipient, or
b. A probable overpayment has occurred or is occuring which can be adjusted only if aid payment is withheld.

.43 Notification to Recipient when Aid Payment Withheld

The recipient, the parent or other person responsible for the child in AFDC, is to be notified immediately when a warrant is going to be withheld beyond its usual delivery date for any reason other than death. Form ABCD 239, Notice of Action, or a substitute form with the same information, shall be used for this notification. Every notification shall also include:

.431 A statement of what information, if any, is needed or action required to establish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434, below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that, at a time and place specifically designated, the recipient, parent, or other person may have the opportunity to meet in person with the caseworker or with another responsible person in the county department in order to enable the recipient, parent or other person

(a) to learn the nature, extent and origin of the information on which the withholding action is based;

(b) to provide any explanation or information, including, but not limited to that described in the notification pursuant to subsection .431, above;

(c) to discuss the entire matter informally for purposes of clarification and, where possible, resolution.

Exhibit 3 to Montgomery Answer

Explanatory statement for revision of PSS 40-181.11, 44-325.41 and 44-325.43

The proposed amendments to Sections 40-181.11, 44-325.41 and 44-325.43 are intended to strengthen and further clarify the current regulations dealing with the action to be taken in connection with withholding, suspension and termination of aid.

40-181.11 Effective 3/1/68

Section 40-181.11 is proposed for amendment by addition of a cross-reference to Section 44-325.43 which will contain the procedure to be followed.

44-325.41 Effective 3/1/68

Section 44-325.41 is proposed for the purpose of adding a cross-reference for the same purpose.

44-325.43 Effective 3/1/68

Section 44-325.43 is proposed for amendment to provide that the individual involved—whether recipient, parent, or caretaker, must be given an opportunity to confer in-

formally with a responsible representative of the county department at a time and place stated in the notification to be sent, for the purpose of becoming fully informed of the nature, extent and basis of the information leading to the county action; to present his side of the story, including any proof he may wish to produce at that time; and in general afford him the kind of "confrontation" declared to be essential in several recent court decisions, and also raised in a number of cases currently pending in the state and federal courts throughout the country including California.

Filed 3/20/68

United States District Court for the Northern District of California

[Title Omitted in Printing]

PRE-TRIAL ORDER [EXCERPT]

* * * * * * *

6. *Admitted and Undisputed Facts*

A. Plaintiff Mae Wheeler is an adult citizen of the United States and a resident of the City and County of San Francisco, State of California.

B. Defendant John Montgomery is the Director of the California Department of Social Welfare and is charged with Statewide administration of the OAS program and with establishing rules and regulations to carry out the statutory provisions of said program.

C. Defendant Ronald Born is General Manager of the San Francisco City and County Department of Social Services and is responsible for administration of the OAS program in the City and County of San Francisco, State of California.

D. The OAS program created by §§ 12,000, *et seq.*, of the California Welfare and Institutions Code provides financial aid to persons over 65 years of age. Persons who meet the statutory criteria receive financial aid as a matter of statutory entitlement.

E. At all times relevant hereto the State of California and defendants, in order to receive Federal funds for the OAS program of the State of California have been required by the Social Security Act, Title 42, U.S.C., §§ 301, *et seq.*, to have formulated a "State Plan" for said program, in conformity with the provisions of the Act and the United States Constitution. The Social Security Act, Title 42, U.S.C., § 302(a)(4), as interpreted by regulations of the United States Department of Health, Education and Welfare, require that a "State Plan" provide for granting an opportunity for a fair hearing before the State agency to any individual aggrieved by an action of a County Department of Social Welfare.

F. Plaintiff Mae Wheeler, a 75 year old widow had been receiving OAS continuously and in varying amounts since December 1959 to supplement her social security benefits in the amount of $44.60 per month.

G. Defendant County received an anonymous telephone call on August 30, 1967, regarding plaintiff's eligibility for OAS. Plaintiff was contacted by defendant County on August 30, 1967, and in that telephone conversation plaintiff stated that she had received and subsequently transferred during April 1967 the proceeds of a check in the sum of $4,582.15 to her grandson, Bobby Lee Wheeler, in accordance with her deceased son's deathbed wish. Mrs. Wheeler's September 1, 1967 warrant was withheld. Defendant County found her eligible for General Assistance funds as of December 1, 1967.

H. Plaintiff Mae Wheeler's minimum monthly need, as of August 31, 1967, was determined by defendants to be $158.55 and was met through direct Social Security benefits of $44.60 and an OAS grant of $113.95. The County agreed to grant General Assistance on December 1, 1967, in the

sum of $53.90 a month which, when added to her Social Security payment, would have given her a monthly income of $98.50. Defendant's withdrawal and termination of her OAS grant caused plaintiff Mae Wheeler immediate and irreparable injury in that she did not have sufficient funds with which to subsist on a day-to-day basis without her full OAS payment.

I. For the reasons set forth in paragraph VIII of the hearing officer's proposed decision, the County on November 2, 1967, discontinued plaintiff's OAS grant effective August 31, 1967. (A copy of said decision, defendant Montgomery's Exhibit A, is incorporated in full herein.)

J. On November 16, 1967, plaintiff filed an appeal with defendant John Montgomery and requested a fair hearing together with a further request that her aid be restored and continued pending a decision after said hearing. The hearing was held on December 22, 1967. On January 12, 1968, defendant John Montgomery, Director of the Department of Social Welfare, adopted the proposed decision of the hearing officer. The decision ordered that the plaintiff's claim be granted and that she be restored to OAS effective September 1, 1967.

7. *Facts at Issue*

A. All OAS recipients are similarly affected by §§ 10950 *et seq.*, and §§ 12200 and 12201 of the California Welfare and Institutions Code, which prescribe the hearing procedure in the OAS program and authorize the *ex parte* termination of OAS grants.

B. County Welfare personnel are authorized to grant financial assistance under the OAS program and other categorical aid programs only in accordance with the rules

and regulations of the State Department of Social Welfare which are mandatory upon all counties.

C. The actions of the County were taken pursuant to the California Welfare and Institutions Code and the regulations of the State Department of Social Welfare.

D. Plaintiff and all OAS recipients have no adequate remedy at law.

E. During the fiscal year ending June 30, 1967 (the latest period for which statistics are available):

(i) there were on the average 285,174 recipients of OAS cash grants monthly;

(ii) there were 23,555 OAS recipients whose grants were discontinued for reasons other than death as is more particularly set forth in the statistics listed *infra* as plaintiff's Exhibit Number 4;

(iii) the average monthly grant for OAS recipients was $101.51;

(iv) there were 3,164 requests for fair hearings filed by all welfare recipients; of these 382 requests for fair hearings were filed by OAS recipients; and

(v) 1,766 requests were finally determined by a published fair hearing decision and 1,279 requests were resolved by other means.

F. As of January 1968, the average time from fair hearing request to publication of decision was approximately six months.

G. During the month of December 1967:

(i) there were 1,210 requests for fair hearings [Appeals] pending on the first of the month; of these 116 were OAS requests;

(ii) 271 additional appeals were received; of these 12 were OAS appeals;

(iii) 254 appeals were disposed of; 179 by fair hearing decision and 75 by other means; of these 32 OAS appeals were disposed of; 16 by decision and 16 by other means; and

(iv) at the end of December 1,227 appeals were pending; of these 116 were OAS appeals.

H. State fair hearing referees have the authority to rule upon the constitutionality and validity of regulations of the State Department of Social Welfare and statutes relating to the OAS program and the other categorical aid programs.

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California State Department of Social Welfare, Public Social Services Manual

44-325 CHANGES IN AMOUNT OF PAYMENT (effective April 1, 1968)

.43 *Notification to Recipient When Aid Payment is Withheld* (AB, ATD, OAS, AFDC)

The recipient, the parent or other person responsible for the child in *AFDC,* shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to Section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

United States District Court
for the Northern District of California
No. 48303

Mae Wheeler, individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

John Montgomery, et al.,
Defendants.

MEMORANDUM OPINION AND ORDER DISMISSING ACTION

This is an action for declaratory and injunctive relief. The facts concerning the named plaintiff—Mae Wheeler—are essentially as follows: The county welfare agency received a phone call which informed the county that Mrs. Wheeler had received the proceeds of her deceased son's insurance policy and had transferred the money to her grandson. The county determined that Mrs. Wheeler was therefore ineligible for continued welfare (Old Age Security [O.A.S.]) assistance and terminated her aid without affording her a hearing on the alleged facts prior to termination. On December 20, 1967, Judge Alfonso J. Zirpoli, the single judge to whom the application for a temporary restraining order was originally addressed, signed his memorandum opinion and entered various orders. He found the action to necessitate the convening of a three judge court and found a class action appropriate.

The parties have submitted extensive briefs and exhibits and the matter was submitted to the three judges on April 12, 1968, following oral argument.

With respect to the named plaintiff—Mae Wheeler—she has now been afforded a "fair hearing" and has been found eligible for continued O.A.S. assistance. Furthermore, the claim originally pressed by plaintiff—that at least *some* hearing *prior* to the termination of O.A.S. was constitutionally compelled—has now been conceded by defendants. The State of California, subsequent to Judge Zirpoli's order of December 20, has adopted new regulations which do provide for what plaintiff terms an "informal conference" with the recipient (whose aid the county is about to terminate) and the county agency which is about to make the determination that the recipient is no longer eligible for aid.[1]

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1. Reg. 44-325.43 (effective April 1, 1968), as set forth in CALIFORNIA STATE DEPARTMENT OF SOCIAL WELFARE MANUAL, provides as follows:

44-325.43 *Notification* . . .

The recipient, the parent or other person responsible for the child in *AFDC,* shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:

.431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.

.432 Assurance that prompt investigation is being made; that the withheld warrant will be delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

Therefore, the only issue remaining before this court is that raised by the class action which contends that the newly adopted regulations are constitutionally inadequate to afford due process at the pre-termination conference. The class contends that the regulations are insufficient in five respects: (1) the conference is with a county official of the agency which has already determined the question of eligibility rather than before an "impartial" referee; (2) the three day notice requirement is too short; (3) no transcript is required to be made or furnished and the decision is not specifically required to be made only on the evidence presented at the conference; (4) the burden of proof is on the recipient to establish eligibility and not on the county to establish ineligibility, and (5) confrontation and cross-examination are not required.

The constitutionality of the "informal conference" must be determined in light of the fact that even if aid is terminated, the State of California must provide the recipient with the kind of hearing plaintiff seeks.[2] At present such

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.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:
(a) To learn the nature and extent of the information on which the withholding action is based;
(b) To provide any explanation or information, including, but not limited to that described in the notification pursuant to Section .431 above;
(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

2. CAL. WELF. & INST. CODE §§ 10950-10965.

"fair hearing" is required to be given within 45 days[3] and a decision rendered within the next 75 days.[4] As of July 1, 1968, the hearing and decision will be required to be made within 60 days.[5]

The court finds that the present California regulations (see note 1) do comport with the due process clause of the fourteenth amendment to the United States Constitution. The State of California having given Mae Wheeler, the named plaintiff, a fair hearing in which she has been found eligible for O.A.S., and having adopted regulations which assure all within the class due process before termination, the purpose of this action has been achieved and this proceeding may, with propriety, now be dismissed.

It is SO ORDERED.

Dated: April 17, 1968

O. D. HAMLIN
United States Circuit Judge

ALBERT C. WOLLENBERG
United States District Judge

ALFONSO J. ZIRPOLI
United States District Judge

Filed April 19, 1968

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3. CAL. WELF. & INST. CODE § 10952.

4. CAL. WELF. & INST. CODE § 10958.

5. HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION § 6200(j), as set forth in Handbook Transmittal No. 140 (attached to Defendants' Trial Brief as Exh. B), provides as follows:

6200. *Requirements for State Plans*

. . .

(j) Prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing. The claimant will be notified of the decision, in writing, in the name of the State agency and, to the extent it is available to him, of his right to judicial review.

Supreme Court of the United States

No. 634 ---- *, October Term, 19* 68

Mae Wheeler et al.,

Appellants,

v.

John Montgomery, etc., et al.

APPEAL from the United States District Court for the Northern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar. The Solicitor General is invited to file a brief expressing the views of the United States.

April 21, 1969